

## SDG 10

### Invoking extraterritorial human rights obligations to confront extreme inequalities between countries

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The issue of inequalities between countries is often conceptualized and measured in terms of GDP. Moreover, the way to reduce these is often implicitly assumed to be convergence upwards through rapid growth. However, although economic growth may be important for many countries (especially LDCs), global convergence with the GDP of the richest countries would be environmentally catastrophic.

In the context of SDG 10, there is an urgent need to look more holistically at power imbalances and inequalities between countries. Even economic power is far broader than just GDP. Trade balance sheets, size of sovereign wealth funds, access to natural resources, sway over trade negotiations and global tax regimes, currency strength, size of national debt; all of these contribute hugely to inequalities between countries. Decision-making in global economic governance is also crucial of course, as represented in SDG target 10.6 (“Ensure enhanced representation and voice for developing countries in decision-making in global international economic and financial institutions”). But imbalance of decision-making power (and power more generally) goes much further than just voting rights in international institutions. First, there are many regional or exclusive international institutions, such as the OECD or the G20, which have a great deal of power over the global economic environment (more so than some

‘global’ institutions), and where developing countries are de facto not invited to the decision-making table.<sup>2</sup>

#### Cross-border spillover effects of national policy

However, even more significant and yet more intangible is the fact that high-income countries effectively enjoy impunity for their actions that have sometimes catastrophic consequences for people beyond their borders. States exert significant extra-territorial influence in a plethora of ways – be they through investment and financial policies, through their capacity to regulate multinational corporations over which they have jurisdiction, or through the cross-border spillover effects of national policy decisions in areas such as environmental regulation and corporate tax rates. These all exert a profound influence on the capacity of other national governments to realize their human rights and development commitments – through directly constraining their trade or tax revenue, through polluting their air or waterways, through contributing to rising sea levels, or simply through creating an international economic context which works against their interest.

#### Human rights obligations do not cease at territorial borders

Contrary to what many believe, the relevance and application of international human rights obligations do not cease at territorial borders. Indeed, States’

<sup>1</sup> Parts of this text are based on Center for Economic and Social Rights/ Third World Network (2015).

<sup>2</sup> See the text box by José Antonio Ocampo (“The world needs to revamp international tax cooperation”) in this report.

human rights obligations are as interconnected as are their economies. International human rights law implies duties on States to respect, protect and support the fulfillment of all human rights, including economic, social and cultural rights, beyond the country's territory. These duties are anchored in the UN Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ESCR), and various other international human rights treaties. They have been elucidated further in jurisprudence from regional and international bodies.

Expert bodies and legal scholars have provided authoritative interpretation of extraterritorial human rights obligations (ETOs). In particular, the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights provide the most comprehensive articulation of these duties.<sup>3</sup>

Human rights advocates are increasingly invoking extraterritorial obligations in specific contexts of cross-border human rights harm, and as a result, human rights courts and mechanisms are scrutinizing these obligations more carefully when reviewing States' compliance with the treaties they have signed. To give just a few examples:

- In November 2017, the Committee on the Elimination of Discrimination Against Women (the expert body which oversees the CEDAW Convention which almost every State in the world has ratified) recommended that Norway should review its policy on oil and gas extraction, given the disproportionate impact of climate change on women, if it wishes to be in compliance with its extraterritorial Convention obligations.<sup>4</sup> This recommendation was

prompted in part by advocacy from human rights and women's rights groups.<sup>5</sup>

- In 2016, following a submission from CESR,<sup>6</sup> the Global Justice Clinic at NYU School of Law, Tax Justice Network, and Public Eye, the CEDAW Committee criticized Switzerland for the negative impacts of its financial secrecy policies on woman's rights overseas, especially in developing countries. The Committee called on Switzerland to undertake impact assessments of its financial secrecy and corporate tax policies - which enable large-scale cross-border tax abuses - on women's rights beyond their borders.<sup>7</sup>
- In 2016, the UN Committee on Economic, Social and Cultural Rights (the expert body mandated to review States' compliance with their ESCR obligations) voiced concerns that the UK's financial secrecy legislation and permissive rules on corporate tax are undermining the proper resourcing of human rights overseas. The Committee called on the UK government to conduct a human rights impact assessment<sup>8</sup> of its financial secrecy and corporate tax and reporting policies, to "take strict measures to tackle tax abuse, in particular by corporations and high-net-worth individuals" and to "intensify its efforts, in coordination with its Overseas Territories and Crown Dependencies, to address global tax abuse".<sup>9</sup>

3 FIAN International, ed. (2013). For more see de Schutter et al. (2012) and Center for Economic and Social Rights/Third World Network (2015).

4 CEDAW/C/NOR/CO/9. For more, see [www.ciel.org/news/un-committee-calls-norway-revise-energy-policy-noting-climate-impacts-arctic-oil-extraction/](http://www.ciel.org/news/un-committee-calls-norway-revise-energy-policy-noting-climate-impacts-arctic-oil-extraction/).

5 Notably, the CEDAW Committee's most recent General Recommendation (an authoritative interpretation of the extent and application of CEDAW's standards) includes extensive language on States' extraterritorial obligations. regarding the gender-related dimensions of climate change: CEDAW/C/GC/37 ([http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_37\\_8642\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_37_8642_E.pdf)).

6 [www.cesr.org/sites/default/files/downloads/switzerland\\_cedaw\\_submission\\_2nov2016.pdf](http://www.cesr.org/sites/default/files/downloads/switzerland_cedaw_submission_2nov2016.pdf)

7 CEDAW/C/CHE/CO/4-5 (<http://undocs.org/CEDAW/C/CHE/4-5>)

8 E/C.12/GBR/CO/6 ([http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GBR/CO/6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GBR/CO/6&Lang=en)).

9 This was also prompted by a submission from CESR, the Global Justice Clinic and Tax Justice Network; see: [www.cesr.org/sites/default/files/downloads/GBR\\_CESR\\_SUBMISSION\\_JUNE\\_2016.pdf](http://www.cesr.org/sites/default/files/downloads/GBR_CESR_SUBMISSION_JUNE_2016.pdf).

## Not a panacea – but one tool to address inequalities

Although the scope and legal content of ETOs is now quite well-established, they are still politically contested, particularly by wealthier States reluctant to see international cooperation as a human rights issue. Therefore, they are certainly not a panacea or silver bullet for ending inequalities between countries. They are, however, one tool that advocates are leveraging to try to redress these power imbalances and hold richer countries accountable for abusing their power at the expense of human rights enjoyment in poorer countries. Used in a concerted and progressive way, ETOs can aid in challenging impunity for damaging actions of ‘developed’ countries, which reinforce and exacerbate inequalities between countries, including inequalities in access to clean air, to economic decision-making power, to regulation and taxation of multinational corporations, and in the ability to raise enough public revenues to fulfil basic human rights obligations. They can also be a useful yardstick with which to evaluate ‘policy coherence’, one of the most neglected commitments in the 2030 Agenda. At the very least, policy coherence in the SDG context demands that States should ensure their tax, trade, investment, environmental and other relevant policies ‘do no harm’ (i.e. respect and protect) human rights beyond their borders.

Although the international human rights monitoring system has limited ‘teeth’ and enforcement power, the increasing role of its oversight bodies in monitoring extraterritorial obligations indicates that they are one important channel for highlighting cross-border responsibilities and demanding answers on these global systemic power imbalances that are otherwise largely accountability-free zones. The 2030 Agenda is firmly anchored in international human rights law, according to its Declaration; this law unequivocally include ETOs. The forces driving inequalities between countries go far beyond GDP disparities and IMF board seats; and States’ responsibilities to respect, protect and help fulfil human rights beyond their borders go far beyond providing aid. If rich countries wish to take seriously their SDG commitments and their human rights obligations, these considerations should form a major part of their implementation and assessment of progress.

## References

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